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SUPREME COURT OF THE UNITED STATES

October Term 1956

No. 425

ANGUS M. MACNEIL

v

UNITED STATES OF AMERICA

APPELLANTS RECORD APPENDIX

ANGUS M. MACNEIL
for the Petitioner
547 Somerville Ave.
Somerville, Mass.

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UNITED STATES OF AMERICA
plaintiff

v

Civil Action 1035

GARDEN HOMES INC.
defendant

Docket Entries from June 27 1955 to and including March 2 1956

1955

June 27, H earing is had on Receivers finallaccount and objection of Gar den H omes Inc. to Receivers report and Boston Development Corporations petition for payment, Supplemental report to be filed. Under advisement Connor,J.
Receipt for exhibits by Maurice P. Bois, U.S.attorney.

June 29 Memorandum filed by receiver ex plainig checks issued by receiver.

July 18 Supplement to Receivers Final Report, and certificate of service.

July 18 Receivers Statement of Travel Ex penses, and certficate of service.

August 10 Reporters transcript of Excerpt from hearing on Receivers final Account and objection of Garden Homes Inc to Receivers Report and Boston Develop ment Corp's Petition for payment.

Aug. 26 Petition of A.M.MacNeil and Gar den Homes, Inc. for determination of amount due for services and exp enses denied. Connor J.

Aug. 26. Petition of Boston Development Corporation for payment denied Conn nor J.

La

N ov. 15 The Court queried Angus M. Mac N eil as to his failure to comply with order of June 27 1955, to pay certain claims on certification of the Receiver. H earing is had to be had December 12 1955, at 11 A.M. Connor J.

Nov. 15 On petition of A. M.MacNeil and Garden Homes,Inc. filed April 11 1955 order of August 26 1955, vacated. Connor,J.

N ov.22 Memorandum of Instructions to show cause why Angus M.MacNeil should not be found in civil and criminal contempt. submitted by U.S.Attorney.

Nov.30 Reporters transcript of hearing on motions, June 27 1955.

N ov. 30 Reporters transcript of Court's inquiry of Angus M.MacNeil,November 15 1955.

December 7 Marshall's return on service of Memorandum of Instructions to show cause why Angus M. MacNeil should not be found in civil and criminal contempt. by personal service on Mr. MacNeil by deputy Marshall in Massachusetts.

Dec. 9. Motion to strike Memorandum of Instructions etc., by A.M.MacNeil

Dec.12 Hearing is had on civil and crim inal contempt, at eleven o'clock A.M. Mr. MacNeil did not appear. Hearing is reopened at 3;23 and continued hearing is had on civil and criminal contempt.

Dec. 14 Demand of A.M.MacNeil under Rule 42 of Rules of Court;

Dec. 19 Hearing on civil and criminal con tempt is had before Connor J. Hearing continued to December 29 1955 at 10;45 A.M.

D ec. 30 Continued hearing on civil and criminal contempt is had before Connor. J. Evidence is closed.Argument by Mr. MacNeil.

citations given by Mr. Bois,U.S. Attorney. Finding of verdict of guilty of criminal and civil contempt. Connor,J. Mr.MacNeil is to report Wednesday, January 4,1956, at which time 2 P.M. or until such time as the Court shall direct, for sentence. and is to furnish bail in the sum of five hundred dollars. Appearance bond in sum of $500.00 is signed by Angus M. MacNeil and American Fidelity Co. surety.

1956. January 3 1956.
Motion of Angus M.MacNeil for restraining order and injunction.
Jan.4.
Defendant Angus M.MacNeil appears for sentence on civil and criminal contempt. Opinion, Connor, J. Finding MacNeil in civil contempt for violating orders of this court, ordering him to cause Garden Homes, Inc. to return to receiver the sum of $473.09.,and to be committed to the cus tody of the U.S. Marshall until this order is complied with.; Finding MacNeil is in violation of Title 18; U.S.C. section 401 (2) and (3), ordering him to pay to clerk of this court a fine of $400.00, together with costs of $137.59.
Judgment, Connor,J. in accordance with opinion filed January 4 1956.
Notice od Appeal of Angus M. MacNeil.
Bond of Appeal of Angus M.MacNeil, in sum of $250.00, American Fidelity Company, surety.
Motion of Angus M. MacNeil for stay of sentence. "Sentence to pay fine and costs stayed upon condition that the def endant deposit the sum of $550.00 in the Registry of this Court or give bond in said sum for the payment thereof, Connor,J.

Bond for payment of fine and costs if sus tained by CCA on appeal in penal sum of $550.00. American Fidelity Company, surety.
Jan.4 1956
Motion of Angus M. Mac Neil for assignment of counsel.
Motion denied. Connor, J.
Motion of Angus M. MacNeil to arrest of judgment.
Motion of Angus M. MacNeil to be admitted to bail pending appeal. Motion granted. B ail $1000.00. Connor J. January 5 as of January 4, 1956.
Appearance bond in sum of $1000.00 of Angus M.MacNeil. American Fidelity Co. surety.
January 6 1956
Request of Angus M. MacNeil for inclusion in record to be transmitted to Court of Appeals of certain papers and records.
January 9 1956
Defendants request for admission of facts, and certificate of service.
January 10 1956
Defendants Objections to reques for admiss ion of facts contained in Request for Ad mission of Facts, and certificate of ser vice.
January 11 1956
Motion of Plaintiff re Objections to request for admission of facts contained in Request for Admission of facts and Certificate of service.
January 20 1956
Motion of Angus M.MacNeil for revocation of finding on Petition for contempt of Court, and certificate of service.
January 24 1956
Defendants motion to strike objections to requests for admissions of fact, and certificate of service.
January 27 1956,
Order,Connor J. Dismissing without prej udice so much of petition as asserts a personal claim by MacNeil, reinstating order of August 26 1955, in so far as it applied to the claim asserted by Garden H omes,Inc.(Copies to Maurice P. Bois)

U.S.Attorney, and Angus M.MacNeil)

January 31, 1956

Defendants motion to amend order and cert
ificate of service.

February 10 1956.

Record certified to Circuit Court of Ap
peals for the First Circuit.

March 2 1956

Motion of Angus M.MacNeil tp vacate judg
ment and dismiss proceedings, and certif
icate of Service.

A true Copy certified this seventh day
of March 1956

William H.Barry clerk

EXCERPT FROM HEARINGS ON RECEIVER'S FINAL ACCOUNT AND OBJECTION OF GARDEN HOMES INC, TO RECEIVERS REPORT AND BOSTON DEVELOPMENT CORPORATOONS PETITION FOR PAYMENT.

CONCORD NH. JUNE 27, 1955 Monday 2;00 PM

Mr. Angus M. MacNeil; Your Honor, May I participate in these hearings?

The Court; You may not until you comply with the rule I have laid down. You associate yourself with local counsel, and you will be allowed to participate.

Mr.Angus M.MacNeil; Note my exception.

The Court; Don't argue about it.

Mr.Angus M. MacNeil; Will you note my exception,please?

The Court; Of course I won't note any exception, You are not in here in any legal capacity. Don't interrupt here again or I will have you ejected from this building.

Go, ahead, Mr.Craig,...

I hereby certify that the foregoing is a true transcript of my stenographic notes in the aforementioned matter.

Gerard J.Nolin
Court Reporter.

.....

Letter to Clerk Requesting taking up Motions with Judge of United States District Court.

Concord N.H.

Dear Mr. Barry;

Will you kindly take up with the judge the motions I have filed in the cases of Garden Homes Inc. v Mason and Garden United States v Garden Homes Inc. There are several filed that have not as yet been acted upon. I believe that the Court has altered his position irretrievably by his findings of contempt. It appears that his finding of gailty under section 401,2 and his statement that I was an officer of the Court was a determination. If he had maintained his former position that I was not permitted to appear except with other counsel then he could not have

found me to be an officer of his court in June 1955 after just refusing me the right to speak.His actions seem to revoke said order made at that time otherwise he could not have made the finding yesterday. Will you kindly submit the said motions for his action thereon.I refer to all matters not acted upon except those specifically assigned for Friday next.

very truly yours
Angus M.MacNeil

.....

Objections to Requests for Admissions contained in Request for Admission of Facts (Requests filed on Jahuary 9 1956, objections filed January 10 1956)

Plaintiff in the above entitled case makes the following objections to written request for admissions filed by the defendant on the ninth day of January 1956. Objection is made to requests numbered 1 and sublettered a through z,inclusive, which contains all of the requests for admissions of facts contained in the request for admission of facts. The objection is based on the ground that a request was filed after hearing and therefore not in the purview of Rule 36 of Rules of Civil Procedure and for the further objection that the facts requested to be admibted are irrelevant and immaterial to the issue.

Wherefore, the defendant moves this court for an order striking out requests 1 and sublettered a through z,inclusive.

N orman P. Mason,Commissioner, Federal Housing Administration by Maurice P. Bois;United States Attorney.

I hereby certify that a copy of the foregoing has been mailed this date,January 10 1956, postage prepaid, to Angus M. MacNeil, 547 Somerville Avenue, Somerville 43. Massachusetts.Sgd. Maurice P. Bois; United States Attorney

MEMORANDUM OF INSTRUCTIONS TO SHOW CAUSE WHY ANGUS M. MACNEIL SHOULD NOT BE FOUND IN CIVIL AND CRIMINAL CONTEMPT.

In the United States District Court for the District of New Hampshire, in civil action no.1035; entitled United States of America v Garden Homes Inc., by an order on motion of defendant for instructions under date of September 17 1953, Honorable Aloysius J. Connor, United States District Judge ordered; " ...that payment for main tenance,care, and operation of the property of the corporation are to be paid by the receiver, upon presentation to him of pay roll accounts and outstanding bills,..."

At a further hearing in the same action on June 27, 1955 the receiver stated that funds sufficient to pay three certain acc ounts had been paid by him to Garden Homes Inc. against its voucher, but had not been paid by Garden Homes,Inc. to the creditors. The amounts and accounts were enumeratmed by the receiver as follows; Joseph Pepin $44.64; Sal Toscano $ 59.12; J.J.Moreau & Sons, Inc. $309.33; Total $473.09

Whereupon Judge Connor,in open court ord ered Angus M.MacNeil,President of Garden Homes Inc. then president, as follows;"

I am going to give you twenty days to produce that money or issue a citation for you to show cause why you shouldn't be cited for contempt."

At a further hearing in the same action on November 15 1955 Judge Connor deter mined, by inquiry addressed to Angus M. MacNeil,that the order of June 27, 1955 had not been complied with. Whereupon Judge Connor,in open court notified Angus M.MacNeil to appear at the Courthouse in Concord,New Hampshire on December 12, 1955 at 11;00 o'clock in the forenoon to show cause why he should not be held in civil and criminal contempt. At the same time, in addition to giving Angus M.MacNeil notice of the time and place of the hearing, Judge Connor orally stated the essential

facts constituting the contempt charged which were in substance as enumerated above.

Submitted by Maurice P.Bois,Maurice P. Bois.United States Attorney,a true copy, certified this twentyeighth day of November,1955. Elizabeth M. Hoyt, chief deputy clerk, United States District Court. a true copy attest,Michael H. Barry. Deputy United States Marshal.

MOTION TO STRIKE MEMORANDUM OF INSTRUCTIONS

Now comes the respondent ANGUS M.MACNEIL and states as follows;

1) That the order suggested in the first paragraph of the memorandum contains no orders or directions,directly or indirectly to Angus M. MacNeil. That the said direction called for payment to Garden Homes,Inc by the receiver but no orders to Angus M.MacNeil and therefore there could be no violation of any duty to the court by said Angus M.MacNeil, by failure of payment of said accounts if in fact they were not paid. 2)As to the order of Judge Connor in court on June 27 1955 it will be noted that Angus M.MacNeil was prohibited from participating in said hearing and was not recognized as being officially present in court. Furthermore the accounts of Gar den Homes,Inc.showed more payments made for the account of the project at Manch ester than were received therefrom.

3) Further the Receiver did not allocate any payments made to Garden Homes,Inc.to any specific account of Garden Homes,Inc. The payments were made to said corporation unrestricted except that further payments were not to be made unless receipts were given. No claim has ever been made that this order was ever violated. The Respond ent is entitled to adequate charges being made against him,so that he may properly defend himself after formal notice of charges being made. The memorandum of charges sub mitted to the respondent violates the law and the spirit of fair play under which a party sought to be charged with a vio lation may properly protect himself from abuses.

The respondent further moves that the charges be quashed for the reason that there is no provision in the laws of the United States for the procedure followed here.

ANGUS M.MACNEIL

DEMAND UNDER RULE 42 of RULES OF COURT

Now comes the Respondent and appears specially and does not submit to the jurisdiction of the Court and states;

1) He demands trial before some other judge thanthat alleging the said contempt or causing said notice concerning it to be given.

2) He demands trial by jury of all issues triable to jury in reference to said petition.

3)He demands notification and information guaranteed to him by the laws of the United States in cases of charges made for civil and criminal contempts.

4)He demands that counsel for the United States be not employed in this matter as he represented the United States in the action of United States v Garden Homes Inc. out of which the said charges of contempt arose and therefore said United States Attorney is counsel for opposing party and is ineligible to participate in these proceedings.

ANGUS M. MACNEIL

.....

MOTION FOR ASSIGNMENT OF COUNSEL

Now comes the defendant and moves the Court for assignment of cousel in this proceeding for the benefit of Angus M.MacNeil defendant

ANGUS M. MAC NEIL defendant

.....

MOTION TO BE ADMITTED TO BAIL

Now comes the defendant ANGUS M.MACNEIL and moves this court that an order be entered admitting him to bail pending his appeal to this Court of Appeals for the First Circuit.

ANGUS M. MACNEIL defendant

OPINION

Connor J. Proceeding in the above entitled action to determine whether Angus M.Mac N eil, President of defendant corporation is guilty of civil and criminal contempt. This action was brought to foreclose a mortgage upon a multi unit housing pro ject situated in Manchester.Garden Homes, Inc. the mortgagor, remained in possession of the premises pending adjudication of the issues, and a receiver for rents and profits was appointed, with authority to reimburse the mortgagor fir necessary ex penses incurred in the maintenance and operation of the project. This procedure proved unsatisfactory to Garden Homes,Inc. and claiming it was a hardship to require it to pay these expenses in the first inst ance, it petitioned this court to instrct the receiver to make payments to it for maintenance upon the presentation of pr oper vouchers detailing the debts incurr red.On September 17,1953, the following order was entered;" Upon consideration of the defendant's motion for instructions, filed August 10 1953, the receiver,William H.Craig,Jr. and counsel for the defendant are directed that payments for maintenance care, and operation of the property of the corporation are to be paid by the rec eiver, upon proper presentation to him of payroll accounts and outstanding bills if it appears to the receiver that such expenditures have been incurred in the operation of the project and receipts are furnished for all prior payments of similar charges."

It appears that Garden Homes,Inc. was justly indebted to J.J.Moreau & Sons,Inc. in the amount of $369.33 for goods used in the maintenance of the project, and to one Sal Toscano in the amount of $59.12 for maintenance services. Upon receipt of proper voucher, signed and certified by Angus M.MacNeil,the receiver,in accordance with the order of September

17,1953, gave Garden Homes,Inc.sufficient funds with which to satisfy the above debts The attention of the court was directed to the failure of Garden Homes,Inc. to disburse these funds to the crediters at a hearing held June 27, 1955, upon inter alia, the receiver's final report.MacNeil was present at this hearing and the Court directed as follows;" I am going to give you twenty days to produce that money or issue a citation for you to show cause why you shouldn't be cited for contempt." and Garden Homes Inc. was informed of this directive. On November 15 1955,in open court, the court inquired of MacNeil whether its directive had been complied with, and advised that it had not, gave him notice pursuant to rule (42)(b) of Federal Rules of Criminal Procedure, that a hear ing would be held to determine whether he was guilty of civil and criminal contempt. The Court stated the essential facts constituti ng the offense charged, The order of September 17 1953,when read in the light of the issues it resolved, the discussion at the hearing and its purpose, was a directive to Garden Homes Inc. and necessarily to those persons res ponsible for the conduct of that corpor ation,establishing a procedure for payment of maintenance expenses. The rents and profits collected by the receiver were in custodia legis,and Garden Homes,Inc. was not at liberty to deal as it saw fit with funds obtained from the receiver. Failure to disburse these funds to the creditors on vouchers submitted for the purpose of obtaining such was a violation of the Courts order. The obligations of the corporation in this respect was at least tacitly recognized by its president MacNeil.At the hearing ondefendants motion for instructions,the following represent ation was made;"The Court; It might be a substantial amount,but Garden Homes cred it.. and we are officers of the court here and we certainly are not going out to do something that is contrary to law on it" Mr.MacNeil."

SIGNIFICANTLY, GARDEN HOMES, INC. did not attempt to retain funds received from the receiver until foreclosure had been decreed and a sale of the property immi inent. The parties operated under this arrangement for a considerable period with out any difficulty. and the items now in controversy are contained in the final voucher.

MacNeil was responsible for the defendants corporations conduct. A corporation can only act through its agents, he was then and still is its president, the only person who has ever appeared qua attorney or otherwise before this court in behalf of the corporation, and the signatory of practocally every document filed in court. It cannot be doubted that he was in full control of this litigation in behalf of Garden Homes, Inc. He was the person who certified to the receiver that the items now in comtroversy were justly due and owing for maintenance (necessray).

Under these circumstances, he was an off icer having an affirmative duty to cause the corporation to conform with the orders of court. He was largely if not solely, responsible for the companys non compliance and may be held therefore, although the obligation is not a personal one. Parker v United States, 126 F2nd 370; Teele Soap Mfg. Co, v Pine Tree Products Co. Inc. 8 F. Supp. 546.

On June 27, this court directed MacNeil to pay these items, and he has persistently refused and presently refuses to do so. The failure to pay these items, totaling $473.09, has to that extent damaged the plaintiff, for it is entitled to receive moneys in the hands of the receiver, and that fund has been depleted by that amount The only right of Garden Homes, Inc. to the funds it received from the receiver was to pay them to creditors, and , failing, it cannot retain them. Therefore, it is my opinion and I so find MacNeil to be in civil contempt for violating the orders of this court. Accordingly he is ordered as an officer of this court and of the Corp oration, to cause Garden Homes, Inc.

to return to the receiver the sum of $473.09 and to be committed to the custody of the United States Marshall for this District until this order is complied with.

It is clear that the same conduct may con stitute both a civil and a criminal con tempt.Both aspects may be dealt with in the same proceedings. United Mine Workers v United States,330 US 258.MacNeil was given notice in accordance with rule 42. Federal Rules of Criminal Procedure, and he was accorded all the rights a defendant has in a criminal contempt proceeding.His conduct was such as to call for punishment in order to preserve the authority of t he Court.

Additionally,it is my view that as an off icer of this court MacNeil misbehaved in an official transaction. At the time the order of September 17 1953, was entered he was recognized by this court as coun sel for Garden Homes,Inc. It is clear that an attorney appearing before a court is an officer thereof. Cammer v United States 223 F2nd 322. The transaction in which this difficulty arose was so closely under the supervision of the court as to be an official transaction within the scope of Title 18 USC. section 401(2). The part that MacNeil played in the mis appropriation of the funds received from the receiver was misbehaviour in the highest degree. It is my finding and ruling that MacNeil is in violation of Title 18 USC. section 401(2) and (3), and he is ordered to pay to the clerk of this court a fine of four hundred dollars,together with costs in the amount of one hundred thirty seven dollars and fifty nine cents. Judgment will be entered accordingly.

January 4 1956.

JUDGMENT

JANUARY 4, 1956

This cause came on to be heard, in the above entitled case, to determine whether ANGUS M.MAC NEIL, President of Garden Homes Inc. was guilty of civil and criminal contempt, and in accordance with the opinion of the Court filed on the fourth day of January, 1956,

It is HEREBY ORDERED, ADJUDGED AND DECREED; That Angus M.MacNeil is in civil contempt for violating the orders of this court, Accordingly, he is ordered,as an officer of this court and of the corporation,to cause Garden Homes,Inc. to return to William H.Craig,Jr. Receiver the sum of $473.09, and he is committed to the custody of the United States Marshall for this District until this order is complied with.

It is FURTHER ORDERED, ADJUDGED AND DECREED; That Angus M, MacNeil is guilty of criminal contempt in violation of title 18 USC. Section 401 (2) and (3), and he is ordered to pay to the clerk of this court a fine of four hundred dollars, together with costs in the amount of one hundred thirty seven dollars and fifty nine cents, and stand committed until the sentence be performed.

It is ordered that the clerk deliver a certified copy of this judgment to the United States Marshall or other qualified officer and that a copy serve as a commitment of the defendant,Angus M.MacNeil.

Aloysius J.Connor
U.S.District Judge.

.....

Motion For Stay Of Sentence

Now comes the defendant Angus M.MacNeil and moves that sentence be stayed pending appeal to the Court of Appeals for the First Circuit in accordance with the provisions of Rule 38 of the Rules of Criminal Procedure.

A.M. MacNeil defendant.

APPEAL TO COURT OF APPEALS
(FILED BEFORE SESSION ON JANUARY 4 1956)

Now comes Garden Homes Inc. and Angus M. MacNeil and hereby appeals to the United States Court of Appeals for the First Circuit from the order or judgment of the Court made on December 30 1955 finding the said Angus M.MacNeil guilty of criminal and civil contempt of Court.

2) From the order of Court refusing to give a more defanite statement of charges of contempt of court filed heretofore against Angus M.MacNeil after request by said defendant.

3) From the order of court denying a change of judges for the hearing of charges of contempt of court filed heretofore against Angus M. MacNeil after request by said defendant.

4) From the order of court denying trial of so much of said charges of contempt of court as are permitted to be so tried by jury by the Constitution and laws of the United States.

5) From the order of Court directing the attorney for the plaintiff to prosecute said charges of contempt heretofore filed in this action.

6) From the action of the Court in assuming the role of prosecutor in the prosecution of the charges of contempt of court filed in this action against Angus M.MacNeil.

7) From the action of the Court in ordering the hearing to proceed on the charges of contempt of court without an arraignment or plea to said charges or an opportunity to file and have heard special pleas in connection with said charges.

8) From the order of court in failing and refusing to disqualify himself from hearing of this case after request was made for him so to do.

9) From the orders of the Court in permitting and requesting the admission of incompetent evidence in the trial of this matter.

10) From the orders of the Court in requiring the appearance of local

counsel for ANGUS M. MACNEIL in the alt ernative of dismissal and disregard of his rights and then imposing conditions of appearance beyond any powers of the Court pertaining thereto.
10) From the orders of the Court in deny ing the petition for fees and expenses allowance without a hearing thereon and the subsequent vacation of said order.
12) The constant unfair attitude and man ner of the Court in his relations to the Appellants indicating continuous prejud ice against the Appellants.
12) From the order of Court in entering or making a finding of guilty to charges of contempt of court in the absence of essential allegations being made in form required by Law and in the absence of com petent evidence substantiating any legit imate charges of contempt of court.
14) From the orders of court in entering a finding of guilty of Civil and Criminal Contempt of Court after it was admitted that the other party to this action was in no way harmed by any of the socalled actions of Garden Homes Inc.
All of said orders were made at Concord N.H. in hearings made in this case on December 30 1955 and on other dates of hearings as indicated by the docket.

Sgd. ANGUS M. MACNEIL
547 Somerville Ave.
Somerville, Mass

MOTION FOR STAY OF SENTENCE DURING APPEAL

Now comes Angus M.MacNeil and states that the Court of the United States for the District of New Hampshire on January 4 1956 entered a judgment of guilty against him for the alleged offense of contempt of court not committed before the Court or by an officer of the court in his official duties.That on said January 4 1956 the said court was moved to stay sentence during the pendency of appeal but refused so to do. Notice of the request for stay has been given to the United States Attorney for New Hampshire.The Court gave as reasons for said refusal to order stay of sentence the following; none.

The appellant believes that the court is prosecuting the defendant is not acting in accordance with the duties imposed upon him by law. That the said Court proceeded upon a memorandum insufficient to allege any offense as being committed. That the Court proceeded without requesting a plea of any sort. That the Court proceeded personally after request was formally made for change of judges. That the Court proceeded after a claim for jury was made and refused. That the Court proceeded without furnishing specifications of the alleged offense as requested. That no evidence which if believed in the light most favorable to the United States would tend to prove that any offense was committed by the defendant. That the only evidence of any facts alleged relevant to the allegations made was hearsay and none original even though these said facts did not indicate the commission of any offense.That all acts alleged to have been performed by the defendant were in the reasonable exercise and performance of his obligations as a member of the Bar and in the best performance of his obligations to client with full respect to his obligations to the said court.

Wherefore your defendant respectfully prays that an order enter for

stay of further proceedings upon said judgment pending review by this court in furtherance of the appeal filed heretofore.

ANGUS M. MACNEIL
defendant

Subscribed and sworn to before me.

... Notary public.

.....

Notice of Appeal (filed January 4 1956)
Name and address of the Appellant;
Angus M.MacNeil,53 Chandler Street,
Somerville Mass.

Offense; Contempt of Court

Concise statement of judgment or order, giving Date and any Sentence

January 4 1956; the court vacated the finding of guilty of civil and criminal contempt entered on December 30 1955 and made a new finding of guilty of civil and criminal contempt on January 4 1956.

Name of Institution where confined if not on bail ... none.

I, above named appellant hereby appeal to the United States Court of Appeals for the First Circuit from the above stated judgment dated January 4 1956

Sgd.Angus M.MacNeil Appellant

MOTION FOR ASSIGNMENT OF COUNSEL
(filed December 30 1955)

Now comes the defendant and moves the court to assign counsel to the defense and pro tection of Angus M.MacNeil as provided by the Rules of Criminal Procedure Rule 44.

Sgd A.M.MacNeil defendant.

.....

MOTION FOR ARREST OF JUDGMENT
filed January 4 1956

The defendant moves the Court to arrest the judgment for the following reasons;
1) The memorandum does not state facts sufficient to constitute an offense against the UNITED STATES.
2) The Court is without jurisdiction of the offense in that the alleged offense was, if any, not committed in this District.

A.M.MACNEIL defendant

.....

MOTION OF ANGUS M. MACNEIL FOR REVOCATION OF FINDING ON PETITION FOR CONTEMPT OF COURT

Now comes Angus M.MacNeil and states that in the procedure followed in this matter by the Court,there was no arraignment and no pleas were taken nor were any special motions or pleadings limited to time for presentation.It appearing that the socalled acts constituting contempt of court as charged were alleged to have taken place more than one year ago prior to the filing of any notice or claim or petition for contempt. That the order of court refer red to in the memorandum was alleged to have been entered on or about September 17, 1953.That the alleged payment of funds by the receiver was on or about May 10 1954. Thereafter no funds of the rec eiver either in trust or in payment were made to Garden Homes Inc or its agents servants or attorneys. That by virtue

of USC.Title 18 section 3285 no prosecut ion for an alleged contempt of court can be had after the expiration of one year after the happening of the acts alleged to be a contempt of court.
Wherefore your subscriber respectfully prays this court for revocation of judg ment and order.

Sgd.ANGUS M. MACNEIL
547 Somerville Ave.Somerville Mass.

.....

MOTION FOR RESTRAINING ORDER AND INJUN CTION.

filed about January 10 1956

Now comes the defendant in the above en titled action and states that;
1) On the thirtieth day of December 1955 the defendant in obediance to the orders of this court whether legal or illegal came from outside of the State of New H ampshire to attend a session of this Court at which a matter involving the said defendant was being heard.
2) That during said session a sheriff of the State of New Hampshire in conspiracy with the District Attorney of the United States awaited in the Courtroom for the purpose of molesting the defendant and interfering with his freedom to leave said state after termination of said hear ing on said date.
3) That after the termination of said hear ing the said sheriff of the State of New Hampshire did in fact molest the said defendaht and did attempt to prevent his leaving the State of New Hampshire after wards.
4) That the said actions of the United States Attorney and the State of New Hamp shire are contrary to the dignity and honor due to the Courts of the United States.The said actions of said United States Attorney and of the State of New Hampshire are in contempt of the majesty of the United States in it's guarantees to all of it's citizens that they shall have fair and unbiased trials of all complaints made against them.

5) That the said actions of the said District Attorney and of the State of New Hampshire are in violation of the Constitutional rights of the defendant.
Your defendant has no complete and adequate remedy at law and unless your United States Attorney and his agents of the State of New Hampshire are restrained and after hearing enjoined, further indignities to the honor and majesty of the United States Court for the District of New Hampshire will be committed and the rights of fair trials will be denied to the defendant as required by law.
Wherefore your defendant respectfully prays that;
1) Pending hearing upon this matter your United States Attorney Maurice P.Boisi, his agents servants, and assistants as well as the State of New Hampshire, it's agents, servants, and attorneys be restrained from in any way interfering with the liberty and freedom of the defendant hereto. and from interfering by proceeding further upon the basis of any complaint or information predicated for it's validity upon any service made upon the defendant on December 30 1955 at Concord, New Hampshire after or while in attendance at the District Court of the United States and in coming to said Court and in leaving the State of New Hampshire after the session of said Court.
2) That upon hearing the said restraining order be made an injunction on the same terms prayed for in prayer no.1.
3) For such further relief as to the courts appear meet and just.
4) That all proceedings against the defendant upon which process was issued and served upon the defendant on December 30 1955 be ordered stayed and thereafter quashed.

Sgd A.M.MacNeil

Subscribed and sworn to before me.

Sgd
Notary Public

REQUESTS FOR INCLUSION IN RECORD TO BE TRANSMITTED TO COURT OF APPEALS OF CERTAIN PAPERS AND RECORDS.

Now comes Angus M.MacNeil and requests that the clerk of court for the District of New Hampshire inulude in the record on appeal filed heretofore in this action;

1) All of the original bonds filed by A.M. MACNEIL and / or Garden Homes Inc. during December and January.

2) A transcript of the ecidence so far as the Court acted upon it's contents.

3) A transcript of the evidence of the last quarter of the testimony of each of the following witnesses taken at the hear ing on January 4 1956 and on December 23 1955. William H. Craig.Esq. Joseph Pepin, and Toscano.

4) A copy of the transcript of remarks made by the Court in open Court on Jan uary 4 1956 concerning this case.

5) A copy of the remarks made by the Court after the close of evidence on December 30 1955 in this case.

6) Copies of all checks in evidence.

7) Copies of all pleadings and proceedings required to be furnished to the Court of Appeals.

8) All other evidence material to the pre sentation to the court in evidence at said trial.

very truly yours
A.M.MacNeil

The Court; Well, you have to tell us the year.

The Witness; 1954.The cash credit, the last cash credit was July 16 1955, for two hundred ninety dollars and six ty seven cents

The Court; July 16 1955;

The Witness; July 16 1955.

The Court; And what was that for?

The Witness; That is the payment of the two bills that Mr.Craig just gave us.

The Court; Those are what Mr. Craig paid upon the instruction of the Court?

The Witness; Y es.

(questions by Mr. MacNeil)

XQ. N ow Mr. Chalifour, do you have any recollection of some paint and brushes being bought from your company?

The Court; When?

(questions by Mr. MacNeil)

XQ. During the latter part of 1953?

A. I wouldn't know.

The Court; Well it is excluded, anyway.

(questions by Mr. MacNeil)

XQ. Whether or not the credit for the ret urn of those was ever given by you?

A.I wouldn't know.

XQ. Whether or not the goods were actual ly returned to you?

I wouldn't know.

XQ. In fact you don't know anything other than what appears on the records, your self?

A. Our records is what we go by.

XQ. If it appears that Garden H omes, Inc. delivered merchandise to ypu sometime prior to the billing of three hundred sixty nine dollars, there wouldn't be any bill for three hundred and sixty nine dollars pro perly sent, would there?

The Court; Read that question, will you?

(The last question was read by the rep orter)

The Court; You mean returned to the com pany?

Mr. MacNeil; Returned merchandise for which credit was never given.

The Cpurt; That question is excluded, im material.

(Questions by Mr. MacNeil)

XQ. Whether or not there was some talk with your company by officers of HEARDEN Homes Inc. seeking an accounting that would properly credit the return of merchand ise?

Mr. Bois; Just a monent.

The Court; That is excluded too.

Mr. MacNeil; Save my rights, please, your

The Court; X as.
(Questions by Mr. MacNeil)

POOR CO

The Court; That is competent.

Mr. MacNeil. Save my rights, please.

The Court; You May answer.

The witness; N o.

Mr.Bois; All right you may inquire.

CROSS EXAMINATION

(questions by Mr. Bois)

Q. When you say you have been paid in full Mr.Pepin, does that include the check you hold in your hand?

Mr. MacNeil; I object.

The Court; That is all right, he may answer.

Mr. MacNeil; Save my rights.

(questions by Mr. Bois)

Q. Does that include that check you have in your hands?

A. Well, yes sir, as far as I know.

The Court; In other words, you considerthat someone paid you, whether it is Champagne or someone else, is that it?

The Witness; Thats right.

Cross Examination
(questions by Mr. MacNeil)

XQ. Whether or not, Mr.Toscano, you were paid in full?

A. Y es, Sir.

XQ. There is nothing due you now, any more?

A.No.

XQ. Now isn't it a fact, Mr. Toscano, that you worked for Somerville Milling Comp any at times; weren't you sent down at the mill?

A. No Sir.

XQ. Didn't you go down to the mill at times?

A.No, Sir.

The Court; Where is this mill?

Mr. MacNeil; Brookline NH.

The Witness; I never went to the mill.

(questions by Mr. MacNeil)

XQ. Did you drive the mill trucks?

A. No.

XQ. Are you sure?

A. Positive.

XQ. Y ou didn't drive the red truck, the Chevrolet?

A. N o Sir.

XQ. Did you drive the tractor; you drove that, didn't you?

A. Up at North Union Heights.

XQ. Did you drive the light Ford truck?

A.Y es.

XQ. Did you know that was owned by Somer ville Milling Company?

right hand side next to the last circle?

A. I don't recall any fire there.

XQ. Do you recall the foundations, someof the cellar floors were opened up for drainage of water?

A. Y es Sir.

XQ. You didn't know there was some cons truction work done on those houses, didn't you?

A. The Court; I don't want to waste time on that, Mr. MacNeil, Is it your pur pose to establish that this man was em ployed by Somerville Milling Company during the week of May 6 1954, that check that you sent to him was in payment for work he had done for that company, is that your position? Is that what you are saying?
Mr.MacNeil; I would rather not go into that.

The Court; You don't want to go into that?

Mr. MacNeil; I don't want to go into that.

The Court; You refuse to inform the Court, to tell it your position.
Mr. MacNeil; This is a criminal proceeding I don't want to go into that question at the present time.
The Court; Go ahead, then, go ahead.
(questions by Mr.MacNeil)

XQ. Now Mr.Tascano, did you ever receive a check from Garden Homes Inc. for pay ment of the payroll?

A. N o, not from Garden H omes Inc. always Somerville Milling.
XQ. Always Somerville Milling Company. W ell that isn't quite correct either Y ou received some from Boston Devel opment Corporation?
The Court; Which is it? Always or once in a while? Now the both of you have got me confused. Which is it? Who paid you Mr. Witness.
The Witness; I am almost sure it was always Somerville Milling. I don't remember any coming from Boston Development.
(questions by Mr. MacNeil)
XQ. In the early part of the time you were working up there wasn't it Boston Development Corporation?
A. No. it was Somerville Milling Company.
XQ. Do you recall that you received all of your payments with Somerville Mill ing cheacks?
A. I am almost sure.
XQ. You never received any payment from Garden Homes Inc. Though.
A. No.
XQ. Now it is a fact, is it not, Mr. Tos cano, that the other employees receiv ed all their checks from Somerville Milling Company, too?
The Court; That is excluded. I don't care what the others got.

(Questions by Mr. MacNeill)

XQ. Now Mr. Pepin,he received his checks from Somerville Milling Company?

A. Yes.

Mr. Bois; How can this man know?

The Court; Did you see him get it?

The Witness; I saw him get his check.

The Court; All right.

(questions by Mr. MacNeil)

XQ. Now, Mr.Toscano, you were taking your instructions from Mr. Botehlo, were you not?

A. Thats right, sir.

XQ. And what arrangements were made between Mr. Botehlo and the home office at Boston you don't know?

A. No, I don't know.

XQ. In fact you merely did what Mr. Botehlo asked you to do, whether he was working for Somerville Milling Company or working for Garden Homes?

A. That's right.

XQ. Mr. MacNeil; I think that is all.

Mr. Bois; We have no further questions.

The Court; All right, step down.

The witness left the stand.

Mr.Bois; We have no further evidence.

that it was in a conversation with you

and Miss Kennedy?

XQ. You don't have any recollection of when that conversation took place or the time?

The Court; I don't know as there is any point in bringing Alice MacNeil into it unless you insist.

Mr. MacNeil;He is the fellow that brought it in.

The Court: You keep nagging away. H e says he is not sure of it, She is not on trial.

(questions by Mr.MacNeil)

XQ. One or two other questions,Mr.Craig. As the result of the amounts that are in this memorandum, has the Federal Housing Commissioner or the receiver of the property at North Union Heights had to pay out a single cent to either of these men or to any of these people that are in this memorandum?

The Court; I think that it is conceded that they haven't. They haven't, have they Mr.Craig?

The witness; No, I wouldn't authorize it.

The Court; That isn't the point.The point, Mr.MacNeil,is that you have taken the mon ey and misappropriated it. You didn't turn it over.

(questions by Mr. MacNeil)

XQ. Mr.Craig, You will admit, will you, for the sake of the record,that the Rec eiver or the Commissioner of the Feder al H ousing Administration, neither of them have been prejudiced

by the payments that were made?

Mr. Bois; Just a monent.

The Court; Whether they have or not is of little moment, whether they have been prejudiced or not. The point of it is that the Receivers funds have been depleted some four hundred forty or seventy dollars, I can't give you the exact item on it.

Mr. MacNeil; Did you exclude the question. your H onor?

The Court; I didn't get the question. Is there a question?

Mr. MacNeil; Y es.
(questions by Mr. MacNeil)

XQ. Whether or not the Receiver or the Federal Housing Commissioner has been prejudiced by the payment of the funds in any way?

The Court; Well; the question is excluded.

Mr. MacNeil; All right.
(questions by Mr. MacNeil)

XQ. Now, Mr. Craig, whether or not there is any doubt in your mind at the present time of the fact that the two men did work at Garden Homes project for that week to the amount that is stated in the statement that was given to you?

A. Is there any doubt that they worked up there?

XQ. Yes. And that that money was due and owing, or earned...

not due and owing but earned by them that week?

A. No.I considered that that voucher you sent me in so far as it pertains to those men were proper and should have been paid and I paid it.

XQ. And you feel the same way in reference to the Moreau bill?

A.That's right.

XQ. So that whether or not Moreau got paid or didn't get paid, the Federal Housing Commissioner and the Receiver have not been prejudiced by the payment?

The Court; That is not important.It is excluded. (Save my rights please..)
(The Court;)
Mr. MacNeil; The Federal Government, The Treasury of the United States, will be prejudiced if they don't get this money back.

Mr. MacNeil; I will answer that in argument,Your Honor. I believe that is all.

The Court; You mean by that... I want to make myself clear, Mr. MacNeil.If this bill is not paid,Moreau will lose that money.And if I order it paid to Moreau by Mr.Craig without your refunding the funds, the Treasury of the United States will be so much short;that's all.

Mr. MacNeil; All right on that point there.
(questions by Mr.MacNeil)

XQ. You are a lawyer, are you not, Mr. Craig?

A.Yes.

XQ. Do you know of any legal claim that Moreau has against the receiver for that money?

Mr.Bois; Just a monent.

The Court; He hasn't any.I will rule that he hasn't.

Mr. MacNeil; And the same with the Employees?

The Court; The Employees haven't any claim against Craig.

Mr. MacNeil; Or the Commissioner of F.H.A.

The Court; That is something else again.

(questions by Mr.MacNeil)

XQ. Mr. Craig, do you know of any claim that might be made by the Commissioner of F.H.A. on account of the Moreau bill?

Mr. Bois; Just a monent.I pray the Court's judgment.

The Court; Well of course the Commissioner, as the head of an agency of the Govern ment, is entitled to the funds in the Receivers hands, or if he is compelled to pay that bill twice, he will natur ally be prejudiced. Of course that fol lows.

(questions by Mr. MacNeil)

XQ. Is there any legal claim that you know of whereby Moreau

can recover against the Commissioner of the Federal Housing Administration?

The Court; Whether he does or not, that is just his guess. I am not interest ed in what Mr. Craig knows about it.

Mr. MacNeil; That is all.

Mr. Bois; We have no further questions. We have no further evidence, if it please the Court.

(The witness left the stand)

The Court; Did you find any more letters, Mr. Craig, in your search that I asked you to?

Mr. Craig; I found two more, your Honor, the same nature as the first one. It referred to creditors.

The Court; All right. All right Mr. Mac Neil.

The defendant rests.

The Court; You don't offer any evidence at all?

Mr. MacNeil; I don't believe there is any need for it, your Honor.

The Court; I see.

Mr. MacNeil; Do you want me to argue it?

The Court; Yes; you can argue it. But I will make this clear, Mr.Mac Neil, your argument will be limited to the testim ony that has gone in.

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four hundred dollars seventy three doll ars and nine cents. to be specific,which

are funds of this Court and in the custody of this Court, and you have taken them on your own requisition and you refuse to account for them or refuse to either pay the items that they were sent to you or to your corporation, or return them to the Receiver, either one of the other.

Now again, this is not a matter of personal liability, except that as an officer of this court you have a duty to see that this corporation continued to perform what it had agreed to perform, and had requested to perform of this court, in the matter of invoices and in the matter of these ob ligations that have incurred on the sub ject of maintenance. Now you haven't done that.

I will give you one more chance.Are you prepared to do it? Are you prepared to have your corporation take care of these items,Mr.MacNeil? Do you hear me?

Mr. MacNeil; I can hear you, the question is, Your Honor?

The Court; Are you prepared to have the corporation either pay this item of Mor eaus bill, or send the funds back to the Receiver and let him do it, or send the funds back to the Receiver and you can work it out with Moreau's or send the funds back that were sent to you for the pay ment of these mens wages; Are you prepar ed to do that?

Mr. MacNeil; We will have it done under protest, because I don't think there is any obligation on it. I am not waiving my rights under it. I don't think there is any violation committed. If you order it sent back to you, I will have the corporation send the equivalent to you on it. I will do it under protest and reserve our rights under it. I don't think that payment ...

The Court; What do you mean by that?

Mr. MacNeil; If you make such an order as that, I willhave them give the funds back and take an appeal on it. I don't think that is a proper order.

The Court; Either you do it unqualifiedly or else say that you won't do it. You do what you want to.

Mr.MacNeil; We are not in any way shape or manner here attempting to circumvent any lawful orders of the Court. But when we see what we believe is an illegal and oppressive order of the Court and an illegal order of the Court, I can't stand by and take it and say nothing about it.

The Court; I find you guilty sir, of Criminal contempt, and you are in civil contempt, and I am going to make certain findings in a memorandum that I will reduce in substance to what I said in the last few minutes. I will

make certain findings, I will direct you to be here next Wednesday at 2;00 PM at which time I will impose sentence. In the meantime, you are released on five hundred dollars bail on your criminal contempt charges to appear at that time.

The bail, Mrs. Hoyt, will be cash surety company, or unencumbered real es tate in New Hampshire.

N ow I think that is all I have to say about this matter.

N ow we have the other matters coming up here today that I would like to dispose of in so far as they may be..

Mr. MacNeil; Note my appeal from that order.

Whereupon, at 3.10 PM. the aforementioned matter came to a close.

I hereby certify that the foregoing is a true and correct transcript of my steno graphic notes in the aforementioned matter.

Sgd Gerard J Nolin

Court Reporter

In THE DISTRICT COURT OF THE

UNITED STATES FOR THE DISTRICT OF NEW

HAMPSHIRE

UNITED STATES OF AMERICA

vs CIVIL ACTION
1035

GARDEN H OMES INC.

CONCORD NEW HAMPSHIRE

JANURAY 4 1956

WEDNESDAY 3;05 PM

Sentence on civil and criminal contempt

B efore; The Honorable A.J. CONNOR
U.S. JUDGE FOR DISTRICT

Appearances; Maurice P.Bois, Esq. U.S.

attorney, ans William Maynard,Esq.

ASST. U.S. Attorney, for the U.S.A.

ANGUS M. MACNEIL,Esq. the defendant

appearing pro se.

The Court; Well, Mr. Mac Neil, you were ordered to be here at two o'clock, to day,and you failed to be here.

Mr.MacNeil; I did the very best I could. Y our Honor, to be here at two o'clock. I was engaged before the Supreme Jud icial Court in Massachusetts this morn ing and actually had quite a job to be excused this afternoon by them. I got the earliest train that was possible to get out of Boston in order to get up here.The train gets in shortly after two o'clock, and I called and left word that I would be late.

The Court; I am going to give you a chance to explain that to some other judge. I am going to cite you in before another judge on the charges other than I have indicated to you, on which I am disqu alifiying myself.

N ow taking the matter at hand; let the record show that the cerdicts of guilty in civil and criminal contempt of last week December 30, are vacated. And I am now finding you in civil con tempt, and I am now making a guilty finding in the criminal contempt, which is reflected by my findings this day which have been reduced to an opinion, and which I will hand you a copy.

(Document handed to Mr. MacNeil by the Court Crier)

The Court; And here is a copy for you Mr. Bois.

N ow in the matter of sentence, which is the business at hand today, on the question of civil contempt....

Mr. Mac Neil; Before we come to that,your H onor, may I offer two motions?

The Court; NO.

Mr. MacNeil; Save my rights please.

The Court: What two motions do you wish to offer?

Mr. MacNeil; One is for assignment of coun sel, the other is for arrest of judg ment.

The Court; Of course, the assignment of counsel is denied. You are a lawyer yourself, and there is no judgment to be arrested because no judgment has been entered, so both of those motions must necessarily fall.

Mr. MacNeil; I think you will find the arrest of judgment is before sentence and after finding.
Will you save my rights, please?

The Court; If you will just not interrupt again,if you will. I am finding you in civil contempt for violating the orders of court. And, accordingly, you are ordered

as an officer of this Court and of th corporation, to cause G arden H omes Inc. to return to the receiver the sum of four hundred seventy three dollars and nine cents and to be com mitted to the custody of the United States Marshall for this District until this order is complied with.

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In the matter of criminal contempt, it is my finding and ruling that you are in violation of Title 18, USC Section 401(2) and (3), and you are ordered to pay to the clerk of this court a fine of four hundred dollars, together with costs in the amount of one hundred thirty seven dollars and fifty nine cents and judgment will be entered accordingly. And so Mr. Marshall, Mr. MacNeil is in your custody.

Mr. MacNeil; I respectively move, your Honor, for a stay of execution. I have filed such a motion.

The Court; Well, now, I will make one state ment, and don't bother me any further with any of these suggestions here that are immature or improper. We have a set of Federal Rules of Criminal Proced

ure. You are a lawyer, and you can read If you don't know what the law is, y ou can hire a lawyer that does know it, and you can proceed according to the Rules of Federal Criminal Procedure and protect yourself in any way that you see fit. That is my last word on the subject.

Mr. MacNeil; That is exactly what I am doing, your Honor, and I move you now, pending appeal, I move you for a stay of execution of sentence. I have filed a motion your Honor.

The Court: Take him into custody.

(Whereupon at 3;15 P.M. the agoremention ioned matter came to a close)

I hereby certify that the foregoing is a true and correct transcript of my stenographic motes in the aforementioned matter)

Sgd. Gerard J. Nolin
Court Reporter